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16 FOUNDATION

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SANTA CLARA
19 UNLIMITED JURISDICTION

20 MATEEL ENVIRONMENTAL JUSTICE
21 FOUNDATION,

22 Plaintiff,

23 v.

24 CEDAR FAIR MANAGEMENT, INC.

25 Defendant.

26 Case No. 1-15-CV-285651

27 **CONSENT JUDGMENT**

28 ENDOSED

2017 MAR 14 A 7:54

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA

L. QUACH-MARCELLANA
DEPUTY

1 **1.0 INTRODUCTION**

2 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”)
3 acting on behalf of itself and the public interest, previously filed a complaint (“Complaint”) in this
4 action for civil penalties and injunctive relief in Santa Clara Superior Court, against Defendant
5 CEDAR FAIR MANAGEMENT, INC. (“Defendant” or “Cedar Fair”) The Complaint alleges,
6 among other things, that Defendant operates the Thunder Raceway and Bernie Oldfield Speedway
7 kart tracks (“the Go Kart Tracks”) at Cedar Fair’s Santa Clara, California Great America amusement
8 park. Mateel has alleged that exhaust from the Go Kart Tracks expose Great America’s patrons to
9 engine exhaust (condensates/extracts), carbon monoxide, benzene, toluene, benzo(a)pyrene,
10 formaldehyde, acetaldehyde, 1,3-butadiene, benz(a)anthracene, benzo(b)fluoranthene,
11 benzo(k)fluoranthene, benzo(j)fluoranthene, chrysene, and indeno [1,2,3-cd] pyrene (collectively
12 hereinafter “listed chemicals”) in violation of provisions of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”). In
14 particular, Mateel alleges that Defendant knowingly and intentionally exposed Great America
15 patrons to listed chemicals by operating the Go Kart Tracks while knowing that exhaust from the go
16 karts operated at the Go Kart Tracks (“the Go Karts”) contained listed chemicals and that Cedar Fair
17 intended Great America patrons to be in places where Cedar Fair knew they would breathe exhaust
18 gasses from the Go Karts. The above referenced “listed chemicals”, including carbon monoxide, are
19 chemicals known to the State of California to cause cancer and birth defects or other reproductive
20 harm.

21 1.2 On July 1, 2015, and pursuant to Health & Safety Code section 25249.7(d), Mateel
22 sent a Notice of Violation letter concerning the allegations set forth in Paragraph 1.1 to Defendant,
23 the California Attorney General, and the District Attorney for Santa Clara County.

24 1.3 On September 15, 2015, more than 60 days since Mateel sent its July 1, 2015 Notice
25 Letter, and without an authorized public prosecutor having filed a Proposition 65 enforcement action
26 against Cedar Fair for the claims alleged therein, Mateel filed a Complaint in which Cedar Fair was a
27 Defendant. In the Complaint, Mateel alleges that Cedar Fair violated Cal. Health & Safety Code
28 Section 25249.6 by knowingly and intentionally exposing people to the above-referenced listed

1 chemicals, without first providing a clear and reasonable warning to such individuals.

2 1.4 Mateel alleges that Defendant is a business that employs more than ten people, Cedar
3 Fair operates the Go Kart Tracks at its Santa Clara, California Great America amusement. Exhaust
4 gasses from the Go Karts contain listed chemicals and patrons that Defendant intends to be in
5 proximity to the Go Kart Tracks inhale listed chemicals emitted from Go Karts. Mateel alleges that
6 the exposures to listed chemicals that result from Defendant's operation of the Go Kart Tracks are
7 subject to the warning requirement of Health and Safety Code Section 25249.6.

8 1.5 For purposes of settlement and the entry of this Consent Judgment only, the parties
9 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
10 and personal jurisdiction over Defendant as to the acts alleged in the Complaint and the Notice of
11 Violation, that venue is proper in the County of Santa Clara and that this Court has jurisdiction to
12 enter this Consent Judgment as a full settlement and resolution of the allegations contained in the
13 Complaint and of all claims that were or could have been raised by any person or entity based in
14 whole or in part, directly or indirectly, on the facts alleged in, arising from, or related to the
15 Complaint and/or the Notices of Violation.

16 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
17 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
18 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
19 not constitute an admission with respect to any material allegation of the Complaint, each and every
20 allegation of which Cedar Fair denies, nor may this Consent Judgment or compliance with it be used
21 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Cedar Fair.

22 1.7 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

23 **2.0 SETTLEMENT PAYMENTS**

24 2.1 In settlement of all of the claims referred to in this Consent Judgment, Cedar Fair
25 shall pay \$175,000.00 in total monetary relief, inclusive of Paragraph 2.2, below. Of the foregoing
26 amount, Cedar Fair shall pay a total of \$25,000.00 in civil penalties. Of the \$25,000 in civil
27 penalties, Settling Defendants shall pay \$18,750 to the Office of Environmental Health Hazard
28 Assessment ("OEHHA") and \$6,250 to the Mateel Environmental Justice Foundation.

1 2.2 Cedar Fair shall pay the balance of the settlement amount, \$150,000.00, to the
2 Klamath Environmental Law Center ("KELC") as reimbursement for attorney's fees and costs
3 (inclusive of investigative fees, expert witness costs, other litigation costs, and attorney's fees)
4 incurred by KELC on behalf of Plaintiff in investigating and prosecuting this matter and in
5 negotiating this Consent Judgment on behalf of itself and in the public interest. The payments
6 described in Paragraph 2.1 above and this Paragraph 2.2 shall be delivered within 5 court days after
7 the Effective Date to William Verick, Klamath Environmental Law Center, 1125 – Sixteenth Street,
8 Suite 204, Arcata, CA 95521.

9 2.3 Except as specifically provided in this Consent Judgment, each side shall bear its own
10 costs and attorney's fees.

11 **3.0 ENTRY OF CONSENT JUDGMENT**

12 3.1 The parties hereby request that the Court promptly enter this Consent Judgment
13 which shall constitute a full and final adjudication of all claims asserted or that could have been
14 asserted in Plaintiff's Complaint and/or the Notices of Violation. Upon entry of the Consent
15 Judgment, the parties waive their respective rights to a hearing or trial on the allegations of the
16 Complaint.

17 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

18 4.1 As to exposures to the listed chemicals referenced in paragraph 1.1 above and in the
19 Notice Letters and Complaint in this action, and which are caused by operation of the Go Kart
20 Tracks, this Consent Judgment provides a full release of liability on behalf of the public interest to
21 Cedar Fair Management, Inc., as well as its past, present and future corporate parents, subsidiaries,
22 affiliates, predecessors, successors, assigns, distributors, wholesalers and retailers, officers, directors
23 and employees (collectively, "Released Entities"), from all claims for violations of Proposition 65 up
24 through the Effective Date of this Consent Judgment based upon exposure to the above referenced
25 listed chemicals as set forth in Mateel's July 1, 2015 Notice of Violation. Compliance with the
26 terms of this Consent Judgment by Cedar Fair following its entry by the Court shall be deemed to
27 constitute compliance with Proposition 65 as to the listed chemicals referenced in paragraph 1.1 that
28 are generated by operation of the Go Kart Tracks, provided, however, that the authority and

1 discretion of the Office of the California Attorney General shall not be restricted in the event it
2 chooses to undertake enforcement actions in the future.

3 4.2 As to alleged listed chemical exposures associated with the Go Kart Tracks, Mateel
4 on behalf of itself (but not on behalf of the public interest), and Mateel's privies, agents, attorneys,
5 representatives, successors and assigns, waives all rights to institute or participate in, directly, or
6 indirectly, any form of legal action, and releases all claims as between Mateel and the Released
7 Entities, including, without limitation, all actions, and causes of action, in law or in equity, suits,
8 liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines,
9 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
10 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent
11 (collectively "claims"), against the Released Entities and their parents, subsidiaries or affiliates,
12 predecessors, officers, directors, shareholders, attorneys, representatives, agents, employees, and all
13 customers, manufacturers, distributors, wholesalers, retailers, or any other person in the course of
14 doing business involving the Go Kart Tracks and/or any of their component fixtures or equipment,
15 and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or
16 sell the components, fixtures or equipment used by Cedar Fair at the Go Kart Tracks, including, but
17 not limited to, any claims regarding exposure to, and/or failure to warn with respect to, the Go Kart
18 Tracks. In furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which
19 it now has, or in the future may have respecting the Go Kart Tracks, conferred upon it with respect
20 to claims involving the Go Kart Tracks by virtue of the provisions of Section 1542 of the California
21 Civil Code, which provides as follows:

22 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
24 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
25 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
26 SETTLEMENT WITH THE DEBTOR."

27 4.3 Mateel understands and acknowledges that the significance and consequence of this
28 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising
out of or resulting from, or related directly or indirectly to, in whole or in part, the Go Kart Tracks,
including but not limited to any exposure to, or failure to warn with respect to exposure to listed

1 chemicals from the Go Kart Tracks, Mateel will not be able to make any claim for those damages
2 against the Released Entities, their parents, subsidiaries or affiliates, predecessors, officers, directors,
3 shareholders, representatives, attorneys, agents, employees, and all customers, manufacturers,
4 distributors, wholesalers, retailers or any other person in the course of doing business involving the
5 Go Kart Tracks, and the successors and assigns of any of them, who may construct, operate, use or
6 maintain the Go Kart Tracks and/or any component, fixture or equipment thereof. Furthermore,
7 Mateel acknowledges that it intends these consequences for any such claims and any other claims
8 which may exist as of the date of this release but which Mateel does not know exist, and which, if
9 known, would materially affect its decision to enter into this Consent Judgment, regardless of
10 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
11 cause.

12 **5.0 ENFORCEMENT OF JUDGMENT**

13 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
14 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
15 Court of Santa Clara County, giving the notice required by law, enforce the terms and conditions of
16 this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will
17 notify each other of any perceived violation of this Consent Judgment. The parties further agree to
18 meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
19 alleged violation.

20 **6.0 MODIFICATION OF JUDGMENT**

21 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be modified
22 only upon written agreement of the parties and upon entry of a modified Consent Judgment by the
23 Court, or upon motion of any party as provided by law and upon entry of a modified Consent
24 Judgment by the Court. The California Attorney General shall be entitled to at least 15 days' notice
25 of any proposed modification before it is presented to the Court for approval.

26 6.2 Notwithstanding any other term or provision of this Consent Judgment, Cedar Fair
27 may modify the warning message and its method of transmission as specified in Paragraph 7 if it
28 obtains the written consent of the California Attorney General. In the event Cedar Fair seeks such

1 written consent from the California Attorney General, either it shall provide Mateel with 30 days
2 notice before doing so. Mateel may comment on any request Cedar Fair makes to the California
3 Attorney General pursuant to this sub-paragraph.

4 **7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

5 7.1 At a minimum, Great America shall post and keep posted a sign, no smaller than 10”
6 X 10” in a conspicuous place on or next to the ticket booths at which Great America patrons
7 purchase tickets to ride the Go Karts at the Go Kart Tracks. The type font shall be no smaller than
8 50 point for the word “warning”, and 36 size for the remainder, and contain the following content:

9 **"WARNING:**

10 **This area contains chemicals known to the State of California to cause cancer**
11 **and birth defects or other reproductive harm.**

12 **Proposition 65, California Health & Safety Code Section 25249.6 et seq."**

13 7.2 The word “WARNING” shall be capitalized and in bold.

14 7.3 In the event Defendant replaces the gasoline powered Go Karts at with electric
15 powered no-emission go karts, then Defendant may discontinue providing the warnings specified
16 in subparagraph 7.1.

17 **8.0 AUTHORITY TO STIPULATE**

18 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
19 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
20 party represented and legally bind that party.

21 **9.0 RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

23 **10.0 ENTIRE AGREEMENT**

24 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
25 the parties with respect to the Go Kart Tracks, and any and all prior discussions, negotiations,
26 commitments and understandings to them. No representations, oral or otherwise, express or implied,
27 other than those contained herein regarding the Go Kart Tracks have been made by any party. No
28 other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to

1 bind any of the parties with respect to the Go Kart Tracks.

2 **11.0 GOVERNING LAW**

3 11.1 The validity, construction and performance of this Consent Judgment shall be
4 governed by the laws of the State of California, without reference to any conflicts of law provisions
5 of California law.

6 **12.0 NOTICES**

7 12.1 Unless specified herein, all correspondence and notices required to be provided
8 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
9 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
10 the other party at the following addresses:

11 **To Mateel:**

12 William Verick, Esq.
13 Klamath Environmental Law Center
1125 – 16th Street, Suite 204
Arcata, CA 95521

14 **To Defendant:**

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18 **13.0 COURT APPROVAL**

19 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
20 effect, and cannot be used in any proceeding for any purpose.

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IT IS SO STIPULATED:

Dated: 1-24-17

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: 

William Verick
CEO, Mateel Environmental Justice Foundation,
Klamath Environmental Law Center

Dated: 1/23/17

~~CEDAR FAIR, LLP~~

By: 

IT IS ORDERED, ADJUDGED AND DECREED:

DATED: 3.14.17

William J. Elfving

JUDGE OF THE SUPERIOR COURT